

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:11CR23
(Judge Keeley)

EUGENE BARNES,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA BE ACCEPTED**

On March 30, 2011, defendant, Eugene Barnes, appeared before United States Magistrate Judge John S. Kaul and moved this Court for permission to enter a plea of GUILTY to a two count Information. The defendant stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Initially, the Magistrate Judge accepted the defendant's waiver of indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure. Since the offense charged in the Information naming the defendant is punishable by a term of imprisonment of greater than one year, the Court entered into a colloquy with the

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defendant to determine if his waiver of prosecution by indictment was freely given in a sober and knowledgeable fashion.

The Magistrate Judge advised the defendant of the nature of the charges made in the Information, and inquired whether the defendant had read and reviewed the Information with counsel. Defendant waived the reading of the Information.

Next, the Magistrate Judge summarized the defendant's rights to proceed by a Grand Jury indictment, after which, the defendant stated that he understood that he had a right to proceed by indictment by a Grand Jury, and that by waiving this right, the United States could proceed to charge him with the Information just as though he had been indicted. The defendant then signed a Waiver of Indictment in open court.

Based upon the defendant's statements during the plea hearing and the testimony of Detective Rob Miranov, the Magistrate Judge found that the defendant was competent to enter a plea, that the plea was freely and voluntarily given, that the defendant was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On March 30, 2011, Magistrate Judge Kaull entered an order finding a factual basis for the plea and accepting the defendant's plea of

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guilty to the two count Information. The parties did not file any objections. Accordingly, this Court finds that the magistrate judge's recommendation should be **AFFIRMED** and **ACCEPTS** the plea of guilty to the two count Information.

This Court, therefore, **ADJUDGES** the defendant **GUILTY** of the crime charged in the two count Information and, pursuant to Fed. R. Crim. P. 11(c)(3)(A) and U.S.S.G. § 6B1.1(c), **DEFERS** acceptance of the proposed plea agreement until the Court has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., it is hereby **ORDERED** that:

1. The Probation Officer undertake a presentence investigation of **EUGENE BARNES** and prepare a presentence report for the Court;

2. The Government and the defendant to provide their versions of the offense to the probation officer by **April 19, 2011**;

3. The presentence report to be disclosed to the defendant, defense counsel, and the United States on or before **May 20, 2011**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(b)(6)(A);

4. Counsel to file written objections to the presentence report on or before **June 3, 2011**;

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5. The Office of Probation to submit the presentence report with addendum to the Court on or before **June 24, 2011**;

6. Counsel to file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **July 8, 2011**;

Magistrate Judge Kaul1 remanded the defendant to the custody of the United States Marshals.

The Court will conduct the sentencing hearing for the defendant on **Friday, July 22, 2011 at 10:30 A.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED**.

The Court directs the Clerk of Court to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: April 5, 2011

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE